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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,692	08/03/2006	Stanley George Bonney	PB60733-F Usw	4937
23347 7590 07/21/2009 GLAXOSMITHKLINE CORPORATE INTELLECTUAL PROPERTY, MAI B482 FIVE MOORE DR., PO BOX 13398 RESEARCH TRIANGLE PARK, NC 27709-3398				
EXAMINER CAMPBELL, VICTORIA P				
ART UNIT 3763		PAPER NUMBER		
NOTIFICATION DATE 07/21/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/597,692

**Applicant(s)**

BONNEY ET AL.

**Examiner**

VICTORIA P. CAMPBELL

**Art Unit**

3763

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4-6, 9-14, 16, 18-23, 25 and 27-37 is/are allowed.
- 6) ☒ Claim(s) 3, 15 and 17 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 24 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 8/3/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the initial Office Action based on the 10/597692 application filed August 3, 2006. Claims 1-37 as presented in the preliminary amendment are currently pending and considered below.

#### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 13, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipate by USPN 5,085,351 to Martin.

Regarding the above claims, Martin discloses a metering pump system having a storage chamber (20, 22) for storing a fluid product; a metering chamber (62a, 62b, 62c, and portion enclosed by 34, 37, and 52) adapted to provide the metered volume of the fluid product for dispensing through the dispensing outlet by movement of the metering

chamber between a contracted state (Fig. 2) and an expanded state (Fig. 1), movement between these states placing the metering and storage chambers in fluid communication (Fig. 1) to enable the metering chamber to receive from the storage chamber an excess volume (Fig. 1) comprising the metered volume (amount in chamber 62a, b, or c) and a surplus volume wherein movement of the metering chamber from its expanded state to its contracted state causes the metered volume to be pumped from the metering chamber and further wherein the metering chamber has at least one transfer port (72) through which the fluid product flows from the storage chamber to the metering chamber when the metering chamber moves from its contracted to expanded state; a bleed arrangement (72) adapted to bleed the surplus volume of the fluid product from the metering chamber, an inlet valve mechanism (70) which is disposed between the storage and metering chambers and movable between an open state and a closed state; wherein the inlet valve mechanism is associated with an inlet port (72) of the metering chamber and is adapted in use to move from its closed state (Fig. 2) to its open state (Fig. 1) when the metering chamber moves from its contracted to its expanded state to enable flow through the inlet port. Martin also discloses that the bleeding mechanism bleeds the surplus volume back into the storage chamber through the at least one transfer port and that the inlet valve mechanism has an inlet valve control member (68) which is movable from a closing position to an opening position.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-37 are provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1-24, 36-69, 85, and 92 of copending Application No. 10/597678, claims 1-22, 34-69, 83, and 90 of copending Application No. 10/597683, claims 1-46 of copending Application No.

10/597703, claims 1-24, 36-69, 85, and 92 of copending Application No. 10/597624, and claims 1-25, 37-71, 85, and 92 of copending Application No. 10/597690. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the above applications claim in some combination a fluid delivery device having a storage and a metering chamber wherein the metering chamber is comprised of two members in slideable, sealing engagement for measuring out an excess volume

of product, bleeding the surplus volume of product, and delivery of the metered dose through an outlet.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Allowable Subject Matter***

6. Claims 1, 2, 4-6, 9-14, 16, 18-23, 25, and 27-37 are allowed.
7. Claims 7, 8, 24, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell  
Examiner, AU 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763